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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA
FIRST APPELLATE DISTRICT
DIVISION FOUR

THE PEOPLE,

Plaintiff and Respondent,

v.

JUAN CARLOS TORRES,

Defendant and Appellant.

A141041

(Sonoma County
Super. Ct. No. SCR-640597)

Juan Carlos Torres appeals from a conviction following his no contest plea to possession of metal knuckles. He contends that the trial court erred in denying his motion pursuant to Penal Code¹ section 1538.5 to suppress based on the lack of reasonable suspicion to stop and frisk him. We affirm.

I. BACKGROUND

At about 8:30 p.m. on September 14, 2013, Santa Rosa Police Officer Timothy Doherty was on duty, when he received two calls concerning a theft at a Sears store at 100 Santa Rosa Plaza. The first call reported that a 19- to 20-year-old White male, wearing a red hat, black shirt, and jeans had stolen an item from Sears but discarded the item as he ran out of the store in the direction of the Prince Memorial Greenway. The second call, which came a minute or two later, described a second suspect wearing a black baseball hat, black shirt, and red shorts.

¹ All further undesignated statutory references are to the Penal Code.

Three to five minutes after the first broadcast, Officer Doherty arrived at the entrance of Prince Memorial Greenway Park, which was about three to four blocks from the Sears store. There, he noticed a Hispanic male, wearing “a red baseball hat, black shirt, and dark orange shorts,” walking southbound through the park with a teenaged White male. Believing the men matched the description of the suspects, Officer Doherty stopped his patrol car and told the two to stop. He shined his flashlight on them as he approached and said he was detaining them for a crime investigation.

Officer Doherty was alone with the two suspects in an “extremely dark” and “extremely high crime area.” Concerned for his safety, Officer Doherty announced he would conduct a patsearch. He saw a bulge in appellant’s front right pocket, in “a shape of a wallet.” As he patted down appellant, he felt a “hard, metal object” in his rear right shorts pocket. He used his fingers to manipulate the object through appellant’s clothing, and he felt it was three to four inches wide with multiple holes aligned together. Believing the object was a pair of metal knuckles, Officer Doherty reached into the pocket and pulled out the object. It was a gray, full-sized pair of metal knuckles with four finger holes.

Appellant was charged by information with possessing metal knuckles. (§ 21810.) The information included allegations that appellant had three prior convictions (§ 1170.12), and had served three prior prison terms (§ 667.5, subd. (b)). Appellant pleaded not guilty and denied the enhancing allegations.

Appellant filed a motion to suppress the evidence seized by Officer Doherty. In denying the motion, the trial court stated, the temporary detention was appropriate even though the descriptions were “not an exact match.” The court further concluded, based on the fact “there was a possible theft involved from a commercial establishment, it was dark, they were in a high crime area, and that there was one officer with two individuals,” the patdown search was justified.

Following the denial of the motion to suppress, appellant withdrew his not guilty plea, pleaded no contest, and admitted three prior strikes and one prior prison term. The remaining prison priors were dismissed. On February 5, 2014, the court granted

appellant's motion to strike the prior strike convictions. The court then imposed a suspended prison sentence of four years and placed appellant on probation for three years. This timely appeal followed.

II. DISCUSSION

“The standards for appellate review of the trial court's determination on a motion to suppress pursuant to section 1538.5 are well settled. The trial court's factual determinations are reviewed under the deferential substantial evidence standard; its determination of the applicable rule of law is scrutinized under the standard of independent review. [Citation.] We independently assess as a question of law whether, under such facts as found by the trial court, the challenged action by the police was constitutional. [Citation.]” (*People v. Coulombe* (2000) 86 Cal.App.4th 52, 55–56 (*Coulombe*) [officers had reasonable suspicion to detain and patsearch suspect following two in-person reports that a man near a restaurant about 75 feet away had a gun].)

Appellant claims that Officer Doherty lacked reasonable suspicion to detain and frisk him. “A police officer may temporarily detain and patsearch an individual if he believes that criminal activity is afoot, that the individual is connected with it, and that the person is presently armed. (*Terry v. Ohio* (1968) 392 U.S. 1, 30 (*Terry*).) The issue is whether the officers can point to specific and articulable facts that give rise to a reasonable suspicion of criminal activity. Reasonable suspicion is a less demanding standard than probable cause and is determined in light of the totality of the circumstances. (*United States v. Sokolow* (1989) 490 U.S. 1, 7–8.)” (*Coulombe, supra*, 86 Cal.App.4th at p. 56, fn. omitted.) “ ‘A detention is reasonable under the Fourth Amendment when the detaining officer can point to specific articulable facts that, considered in light of the totality of the circumstances, provide some objective manifestation that the person detained may be involved in criminal activity.’ ” (*Ibid.*)

A. Reasonable Suspicion to Detain Appellant

Appellant first contends the police lacked reasonable suspicion to detain him because his clothing did not match the description in the police broadcasts. He contends

that only his black shirt was consistent with the clothing description and, as such, Officer Doherty did not have a reasonable suspicion to stop him. We disagree.

“[A] general description has been held sufficient justification for stopping and questioning persons meeting that description.” (*People v. Craig* (1978) 86 Cal.App.3d 905, 911 (*Craig*)). In *Craig*, police officers were acting on a general description of three robbery suspects. (*Ibid.*) There, the victim described the suspects as follows: “The first was a male Negro, small Afro, five feet, nine inches tall, medium build, blue [L]evis. The second, a male Negro, medium Afro, yellow beanie-type hat with ‘Cheerios’ on the back, and a torn shirt. The third, a male Negro with a small Afro. When stopped, at least one suspect had pink curlers in his hair. There was no ‘Cheerios’ beanie and no torn shirt.” (*Id.* at pp. 911–912, fn. 1.) Despite these discrepancies, the court held that the officers acted reasonably in stopping and initially detaining the defendants. (*Id.* at p. 912.) The court reasoned that even though the defendants “did not perfectly match the general description given, however, since the descriptions and appearances were substantially the same, and coincided in the discernable factors (race, sex, build, number), . . . the officers acted reasonably, under the circumstances” (*Id.* at pp. 911–912.)

In the instant case, the clothing was not an exact match—the second suspect was described as wearing “a black baseball hat, black shirt, and red shorts[,]” while appellant was wearing a “red baseball hat, black shirt, and dark orange shorts.” Nevertheless, appellant was near the scene of a recent crime in the company of another person matching the age, race, and sex of the first described suspect. Also, as it was “extremely dark out,” it was entirely reasonable for dark orange shorts to appear red.

This evidence, considered in light of the totality of the circumstances, provided Officer Doherty with “specific articulable facts” demonstrating “some objective manifestation” that appellant was involved in criminal activity at the time of his detention. (*People v. Souza* (1994) 9 Cal.4th 224, 231.) While appellant insists that the discrepancy in his clothing demonstrates the lack of reasonable suspicion, this fact does not diminish the probative value of the other evidence supporting the trial court’s

contrary finding. (See *People v. Leath* (2013) 217 Cal.App.4th 344, 355 [minor discrepancies in descriptions of the suspect or vehicle are not dispositive for purposes of reasonable suspicion].) On this record, the officer could reasonably believe criminal activity involving appellant was afoot, thereby justifying the decision to detain him.

B. Reasonable Suspicion to Frisk Appellant

Appellant next argues that Officer Doherty unlawfully frisked him. Under *Terry*, “ ‘[w]hen an officer is justified in believing that the individual whose suspicious behavior he is investigating at close range is armed and presently dangerous to the officer or to others,’ the officer may conduct a patdown search ‘to determine whether the person is in fact carrying a weapon.’ [(*Terry, supra*, 392 U.S. at p. 24.)] ‘The purpose of this limited search is not to discover evidence of crime, but to allow the officer to pursue his investigation without fear of violence’ [(*Adams v. Williams* (1972) 407 U.S. 143, 146.)] Rather, a protective search—permitted without a warrant and on the basis of reasonable suspicion less than probable cause—must be strictly ‘limited to that which is necessary for the discovery of weapons which might be used to harm the officer or others nearby.’ [(*Terry*, at p. 26; see also *Michigan v. Long* (1983) 463 U.S. 1032, 1049, and 1052, fn. 16; *Ybarra v. Illinois* (1979) 444 U.S. 85, 93–94.)] If the protective search goes beyond what is necessary to determine if the suspect is armed, it is no longer valid under *Terry* and its fruits will be suppressed. [(*Sibron v. New York* (1968) 392 U.S. 40, 65–66.)]” (*Minnesota v. Dickerson* (1993) 508 U.S. 366, 373.)

Appellant argues the frisk was unlawful because there were no specific facts to support a reasonable inference that appellant was armed and dangerous. He asserts that shoplifting is “hardly an offense normally associated with weapons.” Appellant’s assertion that shoplifting is not an inherently violent crime glosses over the fact that Officer Doherty was outnumbered in an “extremely dark,” “high crime” area. Moreover, “[a]ll crimes carry the *possibility* of violent confrontation—even the feeblest episode of shoplifting triggers the possibility that violent confrontation will ensue when a police officer attempts to apprehend the shoplifter.” (*U.S. v. Golden* (7th Cir. 2006) 466 F.3d 612, 617, cert. granted, judg. vacated on other grounds (2009) 555 U.S. 1131; cf. *In re*

Reginald C. (1985) 171 Cal.App.3d 1072, 1075 [officer patsearched suspected shoplifter and found concealed dagger]; *People v. Vidaurri* (1980) 103 Cal.App.3d 450, 457–458 [shoplifter confronted in store parking lot brandished knife to escape arrest]; *People v. Hooker* (1967) 254 Cal.App.2d 878, 879, disapproved on other grounds in *People v. Correy* (1978) 21 Cal.3d 738, 746 [shoplifter attempted escape by striking and kicking officer and drawing a knife].) Here, Officer Doherty was entirely justified in touching the exterior of appellant's back pocket before proceeding with his investigation in order to guard against a very real danger which, in fact, existed. (See *Terry, supra*, 392 U.S. at p. 23; *In re Reginald C.*, at p. 1075.)

III. DISPOSITION

The judgment is affirmed.

REARDON, ACTING P. J.

We concur:

RIVERA, J.

STREETER, J.